

**CHAPTER 9**  
**STOCKBRIDGE-MUNSEE TRIBAL LAW**  
**YOUTH CODE**  
**GUARDIANSHIP**

**Section 9.1 Starting an Action to Appoint Guardian**

(A) Petition - Who May File: Any person at least eighteen (18) years old may file a petition with the Youth Court requesting that he or she be appointed as a guardian. If the petitioner is married: his or her spouse must also be at least eighteen (18) years old and must sign the petition unless the spouse's whereabouts is unknown or unless this requirement is waived by the Court. "Spouse" for purposes here includes parties to a marriage recognized under tribal custom, or parties to a relationship wherein the couple has resided together for seven (7) years or more and intend to reside together as a family.

(B) Petition - Contents: A petition for appointment of guardian shall include:

- (1) The name, birth date, residence, and tribal status of the youth who is the subject of the petition;
- (2) The name, birth date, residence, and tribal status, if known, of the youth's parent(s) and of the petitioner(s).
- (3) If the youth is residing with someone other than a parent, the location and length at that location; and
- (4) A concise statement of the facts and reasons supporting the request that the petitioner be appointed as a guardian.

**Section 9.2 Guardianship Hearing.**

(A) Setting the Hearing: When the Court receives the petition it shall set a hearing date, which shall not be more than thirty-five (35) days after the Court receives the petition.

(B) Notice of Hearing: Notice of hearing shall be served on all parties in the manner specified under Section 7.12 of Chapter 7. Service shall be executed by tribal law enforcement, the court clerk or other person designated to perform this duty. Notice shall be served at least twenty (20) days prior to the date of the hearing. The notice shall include: the name of the court; the date of the hearing; the time and place of the hearing; the purpose of the hearing; and a copy of the petition. Notice shall be served on:

- (1) The petitioner(s);
- (2) The youth;
- (3) The youth's parent(s);

- (4) The Presenting Officer;
- (5) Any person the Court deems necessary for proper adjudication; and
- (6) Any person the parties believe necessary for the hearing.

(C) Guardianship Report - Preparation: The Indian Child Welfare Worker, in consultation with the Social Services Staff, shall prepare a guardianship report. In preparing the report, the Indian Child Welfare Worker shall conduct a complete home study and shall consult with the youth's parent(s), all health, education and social service personnel who have had prior professional contacts with the youth, and with the petitioner(s) to determine whether appointment of a guardian would be in the best interests of the youth. The Indian Child Welfare Worker may also review the child's previous court record, if any. In addition, the Indian Child Welfare Worker must obtain the recommendation, if any, of the Stockbridge-Munsee Community Tribal Council as to the disposition and any other relevant issues. The guardianship report shall be in writing and contain the professional opinions of all personnel consulted.

(D) Guardianship Report - Service: The Indian Child Welfare Worker shall mail the guardianship report to the Court and to all parties to the proceeding at least ten (10) days before the hearing.

(E) Additional Reports: Any party may file a report which shall include his or her recommendations for consideration by the Court.

(F) Guardianship Hearing - Purpose: The Court shall conduct the hearing to determine whether appointment of a guardian is in the best interest of the youth.

(G) Guardianship Hearing - Conduct: The hearing shall be private and closed. The following procedural rules apply, Section 8.8, (F)-(O) of Chapter 8.

The Court shall hear testimony to determine whether guardianship is in the best interest of the youth. The Court shall consider all guardianship reports submitted for review.

All parties shall be given the opportunity to contest the factual contents and conclusions of the guardianship reports.

### **Section 9.3 Grounds for Appointing a Guardian and Burden of Proof.**

(A) The Court may appoint a guardian when either of the following conditions have been proved by clear and convincing evidence:

- (1) The parent has consented in writing to the guardianship; or
- (2) The youth is a youth in need of care as defined under this Code.

(B) In addition to finding one of the above conditions has been proved, the Court must also find all the following conditions have been proved by clear and convincing evidence:

- (1) That appointment of a guardian is in the best interest of the youth; and
- (2) The youth's best interests would not be served if the youth remains under the parent's care and custody; and
- (3) That the petitioner(s) can provide appropriate and adequate parental care for the youth's financial and emotional support.

#### **Section 9.4 Placement Preference.**

The order of preference in placing a youth with a guardian is:

- (A) Extended family member;
- (B) A member of or person eligible for enrollment in the Stockbridge-Munsee Tribe;
- (C) A member of another Indian tribe;
- (D) If this order of placement preference cannot be met, for good cause shown, then placement may be made with any person who has knowledge of and a desire to foster the youth's tribal affiliation and special needs.

#### **Section 9.5 Enrollment Prior to Appointment of Guardian.**

If a youth is eligible for enrollment in the Stockbridge-Munsee Tribe, the Indian Child Welfare Worker may assist the parent in making application for enrollment of the youth to the Stockbridge-Munsee Community Tribal Enrollment Clerk.

#### **Section 9.6 Order of Appointment - Powers of Guardian.**

(A) If the Court orders the appointment of a guardian, the order may define or limit the guardian's power. If the order does not define or limit the power of the guardian, the guardian has all the rights and responsibilities of a parent except:

- (1) The power to enroll a youth in a tribe other than the Stockbridge-Munsee Tribe if the child is enrolled or eligible for enrollment in the Stockbridge-Munsee Tribe;
- (2) The guardian shall not move outside a fifty mile radius of the Stockbridge-Munsee Community without tribal court approval upon notice and hearing;

(3) Authority to place a youth in another home or with any agency, or to transfer the youth's domicile;

(4) The guardian may not consent to any adoption of the child.

**Section 9.7 Visitation.**

The Court may order visitation between the youth and parent(s) or any other person if the Court finds such visitation is in the best interest of the youth.

**Section 9.8 Court Review.**

Unless otherwise ordered by the Court, the guardianship shall not be subject to periodic or continuing supervision.